

APPEAL NO. 002894

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act) and is based on the sufficiency of the evidence. A hearing was held on November 20, 2000. The hearing officer decided that the appellant (claimant) is not entitled to lifetime income benefits (LIBs) and the claimant appeals on evidentiary sufficiency grounds. The respondent (carrier) asserts that the evidence is sufficient to warrant affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. In an earlier hearing on April 14, 2000, the parties stipulated that the claimant's compensable injury was to his lumbar spine, that the injury included major depression, and that the claimant's impairment rating is 13%. In Texas Workers' Compensation Commission Appeal No. 001082, decided June 26, 2000, the Appeals Panel affirmed the earlier decision that the compensable injury does not extend to hyperglycemia, high blood pressure, and sexual dysfunction. At the hearing in this case, the claimant testified that following his compensable injury he had lumbar spine surgery for two herniated discs but has continued to have back pain as well as alternating pain in his legs; that he uses a cane to walk because his legs feel weak; that his medications (for high cholesterol, high blood pressure, diabetes, sleeping, and back pain) leave him feeling drowsy; that he receives Social Security benefits; and that he does not feel he can work nor does Dr. M, one of his doctors. The carrier introduced various medical reports reflecting a concern with symptom magnification.

The hearing officer did not err in her findings that the claimant has some use of both of his legs; that the evidence is insufficient to establish that the claimant has no ability to work due to his compensable injury; that the condition of the claimant's legs resulting from the compensable injury is not such that he has lost substantial use of his legs and is not such that he cannot get and keep employment requiring the use of those members; that the claimant's spinal injury did not result in permanent and complete paralysis of both arms, both legs, or one arm and one leg; and that the claimant failed to provide sufficient evidence to meet the requirements of Section 408.161 for entitlement to LIBs.

Section 408.161 states the statutory requirements for entitlement to LIBs. The legal principles applicable to LIBs cases are discussed in Texas Workers' Compensation Commission Appeal No. 941190, decided October 17, 1994, including the holding in Travelers Insurance Company v. Seabolt, 361 S.W.2d 204 (Tex. 1962) that the correct standard in determining entitlement to LIBs is whether the body parts involved, feet in this case, "no longer possess any substantial utility as members of [her] body or whether the condition of her [hands] is such that she cannot get and keep employment requiring the use of [hands]."

The claimant had the burden to prove that he is entitled to LIBs. The testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate-reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Thomas A. Knapp
Appeals Judge